

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

OGLALA SIOUX TRIBE and ROSEBUD ) Case No.: 13-5020  
SIOUX TRIBE, as *parens patrie*, to protect )  
the rights of their tribal members; )  
MADONNA PAPPAN, and LISA YOUNG, )  
individually and on behalf of all other )  
persons similarly situated, )  
Plaintiffs, )  
v. )  
LUANN VAN HUNNIK; MARK VARGO; )  
HON. JEFF DAVIS; and LYNNE A. )  
VALENTI in their official capacities. )  
Defendants. )

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**AFFIDAVIT OF ROBERT L. MORRIS IN SUPPORT OF  
DEFENDANTS' RESPONSES TO PLAINTIFFS'  
MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

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STATE OF SOUTH DAKOTA )  
 ) ss.  
COUNTY OF BUTTE )

**ROBERT L. MORRIS**, being first duly sworn upon his oath, deposes and states as follows:

1. I am an attorney with Morris Law Firm, Prof. LLC, which represents Defendants LuAnn Van Hunnik and Lynne A. Valenti, regarding the above-captioned action. I am designated as a Special Assistant Attorney General. I submit this Affidavit in Support of Defendants' Responses to Plaintiffs' Motions for Partial Summary Judgment.
2. Attached hereto as "Defendants' Exhibit 1" is a true and correct copy of the Affidavit of

LuAnn Van Hunnik, one of the Defendants in the above-referenced matter.

3. Attached hereto as “Defendants’ Exhibit 2” is an exemplar of a South Dakota Department of Social Services Child Protection Services (CPS) “Present Danger Decision Making Tool.” Discovery Bates SDDSS 012779-012782. **This will be filed under seal pursuant to this Court’s Protective Order.**
4. Attached hereto as “Defendants’ Exhibit 3” is an exemplar of a “Notification that Child(ren) Have Been Taken into Temporary Custody.” Discovery Bates SDDSS 012797. **This will be filed under seal pursuant to this Court’s Protective Order.**
5. Attached hereto as “Defendants’ Exhibit 4” is an exemplar of an e-mail from a CPS staff worker to a Circuit Court Judge [Intake Officer] concerning placement of a child with DSS after emergency removal by law enforcement. Discovery Bates SDDSS 012798. **This will be filed under seal pursuant to this Court’s Protective Order.**
6. Attached hereto as “Defendants’ Exhibit 5” is an exemplar of an e-mail from a CPS staff worker advising Tribal Representatives of the emergency protective custody of children believed to be affiliated with the Tribe. **This will be filed under seal pursuant to this Court’s Protective Order.**
7. Attached hereto as “Defendants’ Exhibit 6” is an exemplar of a CPS “Request for Service Summary.” Discovery Bates SDDSS 012807-012810. **This will be filed under seal pursuant to this Court’s Protective Order.**
8. Attached hereto as “Defendants’ Exhibit 7” is an exemplar of a CPS “Initial Family Assessment and Safety Evaluation.” Discovery Bates SDDSS 012739-012772. **This will be filed under seal pursuant to this Court’s Protective Order.**
9. Attached hereto as “Defendants’ Exhibit 8” is an exemplar of a CPS “Safety Plan

Determination.” Discovery Bates SDDSS 012773-012778. **This will be filed under seal pursuant to this Court’s Protective Order.**

10. Attached hereto as “Defendants’ Exhibit 9” is an exemplar of a CPS “Protective Capacity Assessment: Case Plan.” Discovery Bates SDDSS 011903-011926. **This will be filed under seal pursuant to this Court’s Protective Order.**
11. Attached hereto as “Defendants’ Exhibit 10” is a true and correct copy of CPS’s “South Dakota Comprehensive Safety Intervention: Impending Danger, Impending Danger Threats and the Danger Threshold” materials from CPS Procedures Manual. Discovery Bates SDDSS 002023-002038.
12. Attached hereto as “Defendants’ Exhibit 11” is a true and correct copy of a spreadsheet for the period of January 1, 2010, through April 1, 2014, listing Native American children who were subjected to emergency removal during a specified time period. Discovery Bates SDDSS 018847-018861. Further information regarding this Exhibit can be found in Defendants’ Exhibit 1. **This will be filed under seal pursuant to this Court’s Protective Order.**
13. Attached hereto as “Defendants’ Exhibit 12” is an exemplar of a “Affidavit of the Department.” Discovery Bates GQ3690-3691. **This will be filed under seal pursuant to this Court’s Protective Order.**
14. Attached hereto as “Defendants’ Exhibit 13” is an exemplar of a “Report to the Court.” Discovery Bates SDDSS 012587-012609. **This will be filed under seal pursuant to this Court’s Protective Order.**
15. Attached hereto as “Defendants’ Exhibit 14” is a true and correct copy of a Policy Memorandum from CPS Division Director, Virgena Wieseler dated November 23, 2005,

concerning use of an ICWA Affidavit. Discovery Bates SDDSS 018711.

16. Attached hereto as "Defendants' Exhibit 15" is a true and correct copy of the CPS Procedures Manual date reference June 2012 concerning ICWA Affidavit. Discovery Bates SDDSS 004832.
17. Attached hereto as "Defendants' Exhibit 16" is a true and correct copy of a chart which provides information from Defendants' Exhibit 11 concerning children discharged from DSS custody to include reason for discharge and number of days from date of 48 hour hearing until date of discharge.
18. Attached hereto as "Defendants' Exhibit 17" is a true and correct copy of CPS Licensed Foster Homes by Race for the Report Period July 1, 2009, to June 30, 2010. Discovery Bates SDDSS 000084-000094.
19. Attached hereto as "Defendants' Exhibit 18" is a true and correct copy of CPS Licensed Foster Homes by Race for the Report Period July 1, 2010, to June 30, 2011. Discovery Bates SDDSS 000095-000104.
20. Attached hereto as "Defendants' Exhibit 19" is a true and correct copy of CPS Licensed Foster Homes by Race for the Report Period July 1, 2011, to June 30, 2012. Discovery Bates SDDSS 000105-000114.
21. Attached hereto as "Defendants' Exhibit 20" is a true and correct copy of CPS Licensed Foster Homes by Race for the Report Period July 1, 2012, to June 30, 2013. Discovery Bates SDDSS 000115-000124.
22. Attached hereto as "Defendants' Exhibit 21" is a true and correct copy of CPS Licensed Foster Homes by Race for the Report Period July 1, 2013, to January 31, 2014. Discovery Bates SDDSS 000125-000134.

23. Attached hereto as "Defendants' Exhibit 22" is a true and correct copy of a chart which cross references Plaintiffs' Exhibit 1 (Hearing Transcripts) by Court File number with DSS Spreadsheet (Defendants' Exhibit 11).
24. Attached hereto as "Defendants' Exhibit 23" is a true and correct copy of Defendant LuAnn Van Hunnik's and Lynne A. Valenti's Answers to Interrogatories and Responses to Requests for Production dated May 6, 2014.
25. Attached hereto as "Defendants' Exhibit 24" is a true and correct copy of House Bill No. 1259 proposed at the Eighty-Ninth Session of the South Dakota Legislative Assembly 2014. This document was obtained from the South Dakota Legislative Research Council web site. The House Judiciary Committee held its hearing on February 24, 2014, on House Bill No. 1259 and the same was deferred to the 41<sup>st</sup> day by the Committee.  
[http://legis.sd.gov/Legislative\\_Session/Bills/Bill.aspx?Bill=1259&Session=2014](http://legis.sd.gov/Legislative_Session/Bills/Bill.aspx?Bill=1259&Session=2014)
26. Attached hereto as "Defendants' Exhibit 25" is a true and correct copy of a transcript of House Judiciary Committee hearing on February 24, 2014, on House Bill No. 1259. The actual audio recording can be accessed at the above hyperlink at recording time 1:24:57. This transcript is certified on page 9 by Deputy Attorney General, Roxanne Giedd.
27. Attached hereto as "Defendants' Exhibit 26" is a true and correct copy of the Affidavit of Roxanne Erickson.
28. Attached hereto as "Defendants' Exhibit 27" are true and correct copies of transcripts of 48 Hour Temporary Custody Hearings involving, based upon best information and belief, Indian children presided over by Judges from the Seventh Judicial Circuit of South Dakota in Pennington County between 2010 and 2014. These transcripts are in addition to those transcripts provided by the Plaintiffs in Plaintiffs' Exhibit 1. These transcripts

are provided in numerical order according to Court file number, earliest to latest. **These will be filed under seal pursuant to this Court's Protective Order.**

29. Attached hereto as "Defendants' Exhibit 28" is a true and correct copy of chart which cross references Defendants' Exhibit 27(Hearing Transcripts) by Court File number with DSS Spreadsheet (Defendants' Exhibit 11).
30. Attached hereto as "Defendants' Exhibit 29" is a true and correct copy of Initial Disclosures of Defendant Mark Vargo.

Dated this 5<sup>th</sup> day of September, 2014.



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Robert L. Morris  
*Special Assistant Attorney General*  
Morris Law Firm, Prof. LLC  
117 5<sup>th</sup> Avenue, P.O. Box 370  
Belle Fourche, SD 57717-0370  
(605) 723-7777  
[bobmorris@westriverlaw.com](mailto:bobmorris@westriverlaw.com)

*Attorneys for LuAnn Van Hunnik  
and Lynne A. Valenti*

Subscribed and sworn to before me this 5<sup>th</sup> day of September, 2014.



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Brenda K. Butler  
Notary Public - State of South Dakota

My Commission Expires: 9-1-2020  
(SEAL)



**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of September, 2014, I electronically filed

**AFFIDAVIT OF ROBERT L. MORRIS IN SUPPORT OF DEFENDANTS' RESPONSES  
TO PLAINTIFFS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of  
the Court for the United States District Court for the Western Division by using the CM/ECF  
system. Participants in the case who are registered CM/ECF users will be served by the  
CM/ECF system.

By: /s/ Robert L. Morris